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EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/619,255
Filing Date: July 19, 2000
Appellant(s): LIN-HENDEL, CATHERINE

Anatoly S. Weiser, Esq.
For Appellant

EXAMINER'S ANSWER

This is in response to the Supplemental Appeal Brief filed 8/14/2006 appealing from the Office action mailed 10/24/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6327588	Danish et al.	12-2001
6,404,426	Weaver	6-2002
7,729,699	Hashimoto et al.	3-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3,4,5,9,10,16, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Danish et al (6,412,012).

In regards to claim 1,3,4,5,9,10,16, and 20, Danish discloses all the features of the instant claims. For example, Danish teaches a process for identifying a single item from a family of items presents a user with a feature screen having a series of groupings. Each grouping represents a feature having a set of alternatives from which to select. Selected alternatives are used as selection criteria in a search operation. Results of the search operation are a revised feature screen indicating alternatives that remain available to the user for further selection and searching. The feature screen and search process, therefore, presents the user with a guided nonhierarchical parametric search to identify matching items based upon user specified criteria and priorities. Also disclosed is an adaptation of the claimed method and system appropriate in an Internet environment (see abstract, and FIG's 1-35).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,6-8,12-15,17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danish et al (6,327,588) in view of Official Notice and further in view of Weaver (6,404,426).

In regards to claims 2,6-8,12-15,17-19, Danish teaches all the features of the instant claims except as follows:

Danish teaches using artificial intelligence rules to match the merchandise with the accessories and producing a list of results (FIG 21-24), but does not specifically mention that the items presented have links to other databases for other types of merchandise. It was old and well known in the art at the time of the invention to include links to other products in a recommendation list. It would have been obvious to a person having ordinary skill in the art to include in Danish the links of the instant invention, because this provides a convenient means for gathering additional information on products that are listed without having to present all the information on one page, which could be overwhelming to the user.

Danish teaches purchasing merchandise and recommending compatible products, but does not specifically mention using a virtual avatar to display the articles that a user wishes to purchase. Weaver teaches a layout and schematics program for preparing and displaying a floor plan depicting merchandise selected by the user (FIG 7, analogous to mannequin trying on clothes).

wherein the dimensions and other architectural features of the floor plan are provided by the user (see summary and user controls);

a models database having images of models (summary);

an animation and morphing program for providing image and motion creation and morphing to models selected from the model database by the user (FIG 7),

wherein the selected models wear merchandise selected by the user (col 2, lines 53-58),

the user able to alter the models and the models' features (summary);

a temporary working database in which the user works while using the system (col 4, lines 7-30). It would have been obvious to a person having ordinary skill in the art to include in Danish the virtual modeling capabilities as taught by Weaver, because this

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type of preview allows the user to become more comfortable with the purchased articles when the transaction is done online (col 1, lines 15-20).
and

The combination of Danish and Weaver teaches manipulating data in a database and also collecting preference data in a database for future retrieval, but does not specifically mention that the data is stored in a temporary working database or a personal folder. It was old and well known in the art at the time of the invention to use temporary databases to manipulate data and to store data that was manipulated in a personal folder. It would have been obvious to a person having ordinary skill in the art to include in the combination of Danish and Weaver the separate databases because this would allow many users to use the database and not overwhelm the storage capacity by storing many groups of data that may never again be accessed. This would also increase the efficiency of the system.

In regards to claim 6, Danish/Weaver teaches means for preparing and displaying, based on specifications provided by the user,

a recommended floor plan showing each item of merchandise selected by the user (Weaver, FIG 7, analogous to adjusted mannequin being dressed with selected clothing).

In regards to claim 12, Danish teaches wherein the interactive wizard guide includes: means for selecting a model from a model database and morphing the model using specifications provided by the user (Weaver, FIG 7).

In regards to claim 13, Danish/Weaver teaches wherein the interactive wizard guide uses an animation graphics composition morphing program to cause the model to be animated and to engage in a full range of movement displayed on the display device (Weaver, FIG 7).

In regards to claim 14, Danish/Weaver wherein the interactive wizard guide includes both inclusion and exclusion mechanisms to assist the user in making preference selections (Weaver, FIG 7).

In regards to claim 17, Danish/Weaver wherein if the merchandize is clothing, the displaying means of the interactive wizard guide can display a plurality of ensembles of clothing for viewing by the user,
each ensemble able to be altered with ensemble items moved from one ensemble to another, colors and patterns changed, and reassembled interactively,
the ensembles able to be displayed using models and animation specified by the user (Weaver, FIG 9B).

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In regards to claim 19, the combination of Danish and Weaver teach a list of items that can be selected for display on an avatar, but does not specifically mention that an additional desired matching items can be retrieved and displayed for viewing that may not be included in the list. It was old and well known in the art at the time of the invention to be able to retrieve additional items that may not be on a provided list (i.e. adding to a shopping cart). It would have been obvious to a person of ordinary skill in the art to include in Danish and Weaver the capability to get additional items, because the user may not be satisfied with the current selections and might want to try on something they had seen earlier thus increasing the likelihood of a sale through the system.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Danish et al (6,412,012) in view of Official Notice in view of Weaver and further in view of Hashimoto (5,729,699).

In regards to claim 21, the combination of Danish and Weaver does not specifically teach wherein the predetermined intelligence rules pertain to determining whether two colors match. Hashimoto teaches a display system, which evaluates and coordinates accessories and colors (see at least abstract). It would be obvious to a person of ordinary skill in the art to include in Danish and Weaver the coordinating suggestion as taught by Hashimoto, because this would provide an additional feature that users, perhaps color blind or lacking in taste, could use to assure that the clothing being bought matches.

(10) Response to Argument

Claim 1:

The examiner acknowledges that the appellant was correct in pointing out that the rejection of claims 1,3,4,5,9,10,16, and 20 did not include a rejection of Official Notice. The examiner has corrected this oversight by restating the above rejection under USC 102.

Appellant argues that Danish does not teach “overriding the wizard guide”. As understood by appellant’s cited section of the specification (page 22, lines 20 and 21), the overriding of the wizard guide is defined as overriding the pre-determined

intelligence rules. Danish clearly teaches circumventing the intelligence rules, for example col 6, lines 43-61 allows a user to override the wizard by entering a free field entry. This permits the user to enter information such as a part number that “overrides” the wizard function and gets the user directly to the relevant information.

Appellant argues that Danish does not teach creating a profile or retrieving data together with the profile. As noted in the previous Office Action, *“Applicant argues that Danish does not teach or suggest means for receiving the user’s preferences and answers to create a profile of the user. The examiner disagrees and notes that this newly added phrase (“create a user profile” from the 6/7/2004 amendment is not defined in the specification. Therefore, the examiner considers the phrase to mean any information that is saved (even temporarily) from a users session. Danish clearly teaches saving information from the user during the session to affect a more accurate search.”* The examiner has further reviewed the sections cited by the appellant in the summary of claimed subject matter and could not locate support for appellant’s purported distinguishing features, however, on page 14, line 23 there is mention that “prior profiling knowledge of the shopper” is used. The examiner maintains the definition above of what a profile is in relation to the support of the appellant’s disclosure.

Claim 2:

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, appellant appears to be arguing that the embodiments of Danish and Weaver, as described in the respective disclosures, are not the same, therefore, one would not be motivated to combine one with the other. The appellant's disclosure combines parametric searching (Danish) with avatar modeling; the examiner notes that Danish is found in class 707/3 (searching, not "electrical connectors (appeals brief page 12) and Weaver is found in class 345/419 (three dimensional graphical imaging, not "clothing intended for personal use" (Appeal Brief page 12)). The examiner contends that one of ordinary skill in the art that was presenting avatars from a parametric search would indeed look to these areas of search and not to the selected embodiments where they are presented. Further, the examiner contends that having the capabilities of Weaver's three dimensional display would clearly help those that would prefer pictorially identifying a part as is evident in Danishes Picture Search (FIG 3).

Appellant argues that Danish does not use intelligence rules. The examiner disagrees and further directs the appellant to the many discussions in Danish regarding alternatives (ex. Col 3, lines 50-65). It is clear that intelligence rules must be present to sift through the plethora of permutations in determining what alternatives are available when certain features are desired. Further, Danish clearly teaches matching

merchandise with accessories through the match process that is evident in the presentation of alternative accessories for a base connector.

Appellant gives examples of what might not be obvious in view of an analogous relation, but does not specifically mention why Danish does not teach “displaying a floor plan depicting merchandise selected by the user, wherein the dimensions and other architectural features are provided by the user” and argues citing *In re Scott* and *In re Mayne*. The examiner notes that the appellant obviously agrees that these are interchangeable within a system, since appellant uses both a clothing/avatar and appliance/floor-plan embodiment without pointing out any system features that would affect the performance of either embodiment differently.

Claim 4:

Appellant argues that Danish does not teach “means for providing the user with names of a plurality of vendors for the merchandise recommended to the user”. Appellant cites Fig 9A1, step 3 (maker menu) as the support for this feature. This figure shows a pull down menu where a distinguishing parametric (vendors) can be a source for limiting the selection of products. Danish clearly provides means for creating a pull down menu for any feature determined to be of importance to a user, therefore, Danish teaches the “means for providing the user with names of a plurality of vendors for the merchandise recommended to the user” and in this case the search characteristic “vendor” is considered to be non-functional descriptive material.

Claim 6:

See response to claim 2

Claim 9:

Appellant argues that Danish does not teach that the data is stored in a local database. The examiner disagrees, Danish teaches a web browser that is used on the client (col 18, lines 40-60), in addition Microsoft Dictionary dated 1999, defines a web browser as having a local hard drive available along with the means/capability to download programs, therefore, Danish has the means to download the data to the local drive from the server. Appellant argues that the examiner disregarded the remainder of the claim “thereby enabling the user to interact with the system without having to traffic data through the network for each search iteration”. This portion of claim 9 is not considered to be a feature but a benefit, because it provides no functionality; that being said, Danish clearly suggests this benefit in col 9, lines 1-3 and col 19, lines 1-40 and FIG 25, in that the screens are being updated (selection criteria and screen number being sent and a screen status for updating of the stored screen being returned) and not sent in there entirety.

Claim 19:

Appellant argues that the combination of Danish in view of Weaver and further in view of Official Notice, does not teach “wherein the user can specify additional desired matching items to be retrieved and displayed for viewing that may not be included in the array”. The examiner believes that the best disclosure in appellant’s specification is at page 22, lines 15-20; Appellant gives an example of what this specifying entails by stating “for example when the shoes, bags, visors, hats, belts recommended are shown with the dress do not strike the shopper’s fancy, the shopper can make requests to be

shown other options". As stated in the previous office action claims 6 and 8 of the Danish reference clearly teach the user making a request to be shown an additional item, having not been satisfied with the array of items that were initially provided.

Claim 20 and 21:

Appellant argues, "Even if the rationale offered in the Final Office Action in support of combining the references suggests employing a color coordination rule, it does not explain why the system would allow the user to override this rule". It is clear that Hasimoto is suggesting a combination that would provide a certain desired result and is not static in requirement thus providing choice. This flexibility is evidenced by the grading scale (FIG 6H); some people may prefer to be cute or Elegant instead of sporty, but if a person is sporty, they may still select the combination and override the color sense suggestion if they disagree.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Fadok', with a long horizontal stroke extending to the right.

Mark Fadok
Primary Examiner

August 14, 2006

Conferees

A handwritten signature in black ink, appearing to read 'Jeffrey Smith', with a stylized, cursive script.

Jeffrey Smith
SPE AU 3625

A handwritten signature in black ink, appearing to read 'Matt Gart', with a stylized, cursive script.

Matt Gart
Appeals Specialist
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